





## REMARKS/ARGUMENTS



In the Office Action, the Examiner issued a restriction requirement alleging that the application claims eight distinct inventions (Groups I-VIII).


Group I, includes claims 109-144 and generic claims 1-108, when ZQ is 1-piperidinylbenzimidazole, drawn to benzimidazoylpiperidines, classified in class 546, subclass 199+, depending on species election.

Group II, includes claims 1-108 when ZQ is 1-piperidinylpyrimidinylimidazole, i.e.,  
 drawn to pyrimidinylimidazolyl piperidines, classified in class 544, subclass 278+, depending on species election.

Group III, includes claims 1-108 when ZQ is 1-piperidine substituted fused bicyclic ring  
 drawn to bicyclic ring substituted piperidines, classified in class 546, subclass 121+, depending on species election.

Group IV, includes claims 1-108 when ZQ is 1-piperidine substituted  
[pyridinyl][pyrrole]/imidazole, i.e.,  
 or  drawn to  
[pyridinyl][pyrrolyl]/imidazolyl piperidines, classified in class 546, subclass 112+, depending on species election.

Group V, includes claims 1-108 when ZQ is piperidine substituted benzindole/imidazole,  
i.e.,  
 or  drawn to compounds classified in class 546, subclass 210, depending on species election.

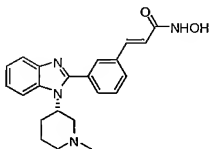
Group VI, includes claims 1-108 when ZQ is piperidine substituted  
 drawn to compounds classified in class 546, subclass 202-204, depending on species election.

Group VII, includes claims 1-108 when ZQ is piperidine substituted non-fused five membered heterocyclic ring, classified in class 546, subclass 207+, depending on species election.

Group VIII, includes claims 1-108 are directed to remaining subject matters that was not encompassed by the above Groups I-VII, classified in class various, subclass various, depending on species election.

### **1. Election in Response to Restriction**

Pursuant to 37 C.F.R. § 1.142, Applicants hereby elect Group I (claims 109-144 and generic claims 1-108) which is directed to benzimidazoylpiperidines, with traverse. Applicants further elect Compound 30, a species, which is disclosed on page 116 of the Specification.



**Compound 30**

Applicants amend claims 14-15, 25, 26-27, 29-32, 37, 42, 43-44, 50, 68, 69-70, 80, 82, 83-85, 91-92, 116, 128, and 140, cancel claims 16, 28, 36, 45, 71, 81 and 86, and withdraw claims 1-12, 55-67, and 97-108 as being directed to non-elected subject matter pursuant to 37 C.F.R. 1.142(b). All of the pending claims 13-15, 17-24, 25-27, 29-35, 37-41, 42-44, 46-54, 68-70, 72-80, 82-85, 87-96, 109-120, and 133-144 are now directed to the elected subject matter of Group I.

Applicants reserve the right pursuant to 35 U.S.C. § 121 to file one or more divisional applications directed to the non-elected subject matter during the pendency of the present application.

## **2. Traversal of Examiner's Restriction**

Applicants traverse the Examiner's eight-way restriction of the application on the grounds that the basis for restriction pursuant to MPEP §803 has not been met.

An application may properly be required to be restricted to one of two or more claimed inventions *only if*:

1. the inventions are independent or distinct as claimed; *and*
2. the search and examination of the entire application places a serious burden on the examiner.

MPEP §803. Accordingly, restriction is only proper when both elements are satisfied.

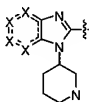
Applicants traverse the Examiner's narrow restriction regarding two of the groups, and submit the search and examination of a broader combination of the Examiner's restricted groups would not place a serious burden on the Examiner. For the Examiner's consideration, Applicants hereby propose a modified restriction resulting in six groups rather than eight, which results from combining four of the currently restricted groups into two new groups where each of the new proposed group's structural features are well adapted for being searched and examined.

Applicants submit that the following proposed modified restriction and the new group Applicants wish to elect is reasonable, well suited for examination and does not place an undue search burden on the Examiner.

### **A. Proposed New Restriction**

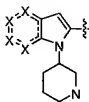
Applicants propose a modified restriction as follows:

New Group A consists of current Groups I and II and part of Group IV, including those compounds wherein the five membered ring is an imidazole; the common structure of new Group A includes a 3-piperidinyl attached to position 1 of an imidazole, wherein the imidazole is fused to a six membered ring to form a fused 6,5 ring system. The common structure varies in the number and/or position of nitrogen atoms in the six-membered ring. The common structure of the group consisting of the formula:



New Group B consists of current Group III.

New Group C consists of current Group V plus the part of Group IV where the five membered ring is a pyrrole; the common structure of new Group C includes a pyrrole having a piperidine group attached at position 1 of a pyrrole ring, wherein the pyrrole is further fused to a six membered ring to form a fused 6,5 fused ring system. The compounds within this part of Group IV and Group V differ in the number and/or position of nitrogen atoms in the six-membered ring. The common structure of the group consists of the formula:



New Group D is current Group VI.

New Group E is current Group VII.

New Group F is current Group VIII.

Applicants would elect Group A based on this alternative restriction.

**B. Applicants' proposed combination of Examiner's Groups I, II, IV and V into proposed new Groups A and C is reasonable**

It is a common practice when conducting chemical structure searches to designate variables in particular positions of the molecule and thereby obtain structures containing the different features represented by those variables in a single search. When a given group has a reasonable number of variables, a search encompassing those variables can be routinely performed that returns a manageable number of compounds and references to be considered without undue burden.

In the instance of Group A, the members are grouped by the common structures that a 3-

piperidinyl is attached to position 1 of an imidazole, wherein the imidazole is fused to a six membered ring to form a fused 6,5 ring system. The common structure varies in the number (0, 1 or 2) and/or position of nitrogen atoms in the six-membered ring. All the compounds of Group A can be searched in a single search by designating the four non-shared ring atoms of the six-membered ring to be either a carbon or nitrogen. In view of the commonality of the structures of this proposed group, Applicants submit that such search will produce a manageable number of references that can be considered without undue burden on the Examiner. Furthermore, it is reasonable for such structures to be examined together.

Similarly, in the instance of Group C, the members all include a 3-piperidinyl attached to position 1 of a pyrrole, wherein the pyrrole is fused to a six membered ring to form a fused 6,5 ring system. All the compounds of Group C can be searched in a single search by designating the four non-shared ring atoms of the six-membered ring to be either a carbon or nitrogen. In view of the commonality of the structures of Group C, Applicants submit that such search will produce a manageable number of references that can be considered without undue burden on the Examiner. Furthermore, it is reasonable for such structures to be examined together.

### **C. Balancing the burden on the Examiner and the Applicants**

The eight way restriction that the Examiner proposes would require Applicants to file at least an additional seven divisional applications if the Applicants are to protect the inventions as currently claimed. If the proposed modified restriction is adopted, the number of divisional applications that the Applicants would have to file would be reduced by two. Applicants understand adopting the modified restriction increases the burden on the Examiner; however, Applicants respectfully request that the Examiner balance the burden on the Examiner in examining a slightly larger group of compounds with the burden on the Applicants to be able to prosecute the inventions currently claimed in the application with a reasonable number of applications. Applicants believe the modified six-way restriction reasonably balances that burden while separating the compounds along lines that are consistent with the inventions and convenient for searching and examination.

#### **D. Request for Reconsideration**

In light of the foregoing remarks, Applicants respectfully request the Examiner to withdraw the eight way restriction requirement between current Groups I to VIII, adopt the modified restriction that Applicants proposed and search new Group A.

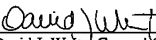
#### **CONCLUSION**

Applicants earnestly believe that they are entitled to a letters patent, and respectfully solicit the Examiner to expedite prosecution of this patent application to issuance. Should the Examiner have any questions, the Examiner is encouraged to telephone the undersigned.

Respectfully submitted,

Dated: July 26, 2006

By:

  
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& V. P. of Intellectual Property  
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